BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-407-C – ORDER NO. 2001-997

NOVEMBER 8, 2001

IN RE: Proceeding to Consider Implementation of a Cap on Surcharges and Rates Associated with Operator Assisted Calls.	)))	ORDER IMPOSING CAPS ON RATES FOR CERTAIN CALLS

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) pursuant to the provisions of Order No. 2000-748, wherein this Commission expressed concern about the tremendous variance in the surcharges and rates for operator-assisted intrastate calls charged by carriers operating within the State of South Carolina. In the same Order, the Commission found that it is reasonable and necessary to establish a proceeding to consider the implementation of a cap on surcharges and rates for operator-assisted calls.

The Commission's Executive Director required publication of a Notice of Filing in newspapers of general circulation. Petitions to Intervene in the matter were received by Pay Tel Communications, Inc. (Pay Tel), BellSouth Telecommunications, Inc. (BellSouth), Verizon Select Services, Inc. and Verizon South, Inc. (collectively, Verizon), the Consumer Advocate for the State of South Carolina (the Consumer Advocate), WorldCom, Inc. (WorldCom), AT&T Communications of the Southern

States, Inc. (AT&T), Sprint/United, the South Carolina Public Communications Association (SCPCA), and the South Carolina Telephone Coalition (SCTC).

Accordingly, a hearing was held on July 2, 2001 at 11:00 AM in the Commission's hearing room, with the Honorable William Saunders, Chairman, presiding. The Commission Staff was represented by F. David Butler, General Counsel, and Adelaide D. Kline, Staff Counsel. Pay Tel was represented by John F. Beach, Esquire. Verizon was represented by Steven W. Hamm, Esquire. The Consumer Advocate was represented by Elliott F. Elam, Jr., Esquire. WorldCom was represented by Darra W. Cothran, Esquire and Kennard Woods, Esquire. AT&T was represented by Francis P. Mood, Esquire. The SCPCA was represented by John J. Pringle, Jr. The SCTC was represented by Margaret M. Fox, Esquire. Neither BellSouth, nor Sprint/United appeared at the hearing.

II. SUMMARY OF TESTIMONY

Gary E. Walsh

Gary E. Walsh, the Commission's Executive Director, testified for the Commission Staff. Tr., at 7-66. Walsh noted that this Commission established this generic Docket in response to numerous complaints from consumers regarding charges being billed on intrastate operator-assisted calls. After consideration of the considerable variation in carrier's charges for operator-assisted calls, this Commission found it necessary to establish this proceeding to consider the implementation of caps on operator-assisted surcharges and rates.

Walsh presented a history of the Commission's regulation of operator-assisted surcharges and rates. Following the divestiture of AT&T and the Bell Operating Companies (BOCs) in 1984, a competitive long distance environment was created. In response to this new environment, the Commission held hearings in response to various Applications for Certificates of Public Convenience and Necessity from long distance providers seeking to provide intrastate long distance service.

Prior to divestiture, when long distance service was provided in what was basically a non-competitive environment, State Commissions had on file approved per minute tariffs from the monopoly provider. These long distance rates were priced well above cost in order to subsidize basic local residential rates. On February 3, 1984, GTE Sprint filed an application (Docket No. 84-10-C) with this Commission, seeking authority to provide long distance telecommunications services on an intrastate interLATA basis. On August 2, 1984, the Commission issued Order No. 84-622 in the above-referenced docket, which granted the Certificate of Public Convenience and Necessity sought by GTE Sprint. In addition, for the first time since the court-approved divestiture of AT&T, the Commission addressed modifications to the nature of regulation of interexchange carriers operating in South Carolina.

In an effort to reflect this new competitive market, the Commission adopted a rate design for GTE Sprint and other intrastate long distance carriers, which included only a maximum rate level for each tariff charge. The Commission further found that adjustments of rates below the maximum would not constitute a general ratemaking, since the approval of the maximum constituted approval of each and every lower rate level. Consequently, a proposed adjustment below the maximum rate level would not require the statutory notice of intent to adjust rates. This methodology was used in regulating all intrastate rates charged by long distance carriers until Commission Order No. 95-1734 in Docket No. 95-661-C was issued on December 15, 1995, pursuant to a Petition filed by AT&T.

AT&T sought approval of alternative regulation for its business long distance services, and for its consumer card, operator services, and private line services. AT&T requested in its Petition that the Commission (1) declare the above-referenced services competitive;(2) remove the application of price caps to these services; (3) treat tariffs filed for these services, and all other new business or consumer card or operator services, as presumptively valid after one day; and (4) eliminate the IXC Information Report. The Commission considered the request from AT&T in light of S.C. Code Ann. Section 58-9-585 (Supp. 2000), which provides for alternative means of regulating interexchange telecommunications carriers. The Commission noted that as a prerequisite to granting the relief requested under this section, it must first determine that the substantial evidence of record shows that a particular service is competitive in the relevant geographic market. After reviewing the record, the Commission concluded that AT&T had not met its burden of proof and therefore, the Commission found that it could not grant the relief under Section 58-9-585 as requested by AT&T.

However, as the Commission had previously found in Order No. 84-622, "competing carriers require flexibility to adjust rapidly rates and charges for their services in response to changes in the market place." Further, the Commission held that

S.C. Code Ann. Section 58-9-720 (1976) authorized the Commission to consider the regulation of AT&T and to modify the described procedure and rate structure prescribed in Order No. 84-622. Based on this finding, the Commission concluded that a partial modification of the maximum rate structure of Order No. 84-622 was advisable in order to allow "competing carriers the flexibility to adjust rapidly rates and charges for their services in response to changes in the market place." Order No. 95-1734 granted AT&T's request to remove the maximum rate cap requirements on business services offered under the AT&T Private Line Service Tariff, Customer Network Service Tariff, and all Consumer Card and Operator Service Offerings.

In compliance with Order No. 95-1734 and the reconsideration Order, No. 96-55, new rate regulation procedures were implemented for specific services. This Commission's intent in adopting the new form of rate regulation was to recognize market-driven pricing in lieu of traditional maximum rate regulation.

Subsequent changes in surcharges and rates associated with intrastate operator-assisted calls are filed by all interexchange carriers approved for alternative regulation. The tariffs are presumed valid upon filing with a 7-day window for requesting an investigation into the rate change. This procedure applies to all providers with the exception of hospitality providers, payphone providers, and inmate providers. For rate changes filed by these providers, modifications were filed and deemed to be in compliance with Commission Orders as long as the rate changes did not exceed AT&T's current rates.

Walsh stated a belief that the consumers of South Carolina have not benefited from the shift from maximum cap regulation to market-driven pricing with regard to surcharges and rates associated with intrastate operator-assisted calls. Walsh noted that in granting the shift from maximum price cap regulation to market-driven pricing, the Commission's intent was to allow competing carriers greater flexibility to meet competitive forces. Generally, more competition in the telecommunications market has resulted in lower rates to consumers, according to Walsh. Further, Walsh stated that in a true competitive arena, consumers should not experience the tremendous variance in rates which exists in South Carolina today related to surcharges and rates for operator-assisted calls. Walsh then presented an example from a consumer's bill, wherein a 5 minute call using MCI's rates resulted in a charge of $1.75, while the same call utilizing AT&T's rates resulted in a charge of $7.70. These were charges for calling card calls over the networks of the two long distance carriers where the consumer used a BellSouth Calling Card. Tr., Walsh at 15. Walsh opined that the competitive forces contemplated by the Commission with the elimination of maximum caps have not produced consistent rates for consumers. Walsh noted that the problem is further magnified when consumers are not aware, until they receive their next month's bill that using their BellSouth Calling Card to make an interLATA calling card call will result in the large surcharge present in AT&T's current rates. Walsh noted that the shift to market-driven pricing with operator-assisted calls has resulted in consumers being exposed to a pattern of ever-increasing rates. Walsh provided examples of this phenomenon.

Walsh expressed the view that this Commission's departure from the maximum cap form of regulation with regard to intrastate operator-assisted calls has not resulted in the competitive advantages to consumers that was contemplated by this Commission. He therefore recommends that we consider reverting back to the maximum cap form of regulation related to surcharges and rates associated with intrastate operator-assisted calls. Walsh's specific proposal is that a maximum cap of $1.75 be established for operator surcharges on all non-person-to-person operator-assisted calls. Further, Walsh recommends that a maximum cap of $3.50 be established for operator surcharges on all person-to-person operator-assisted calls. The higher cap for person-to-person calls is necessitated by the possibility that such calls may require a live operator to intercede in the completion of these calls. Walsh also proposes that a maximum cap of $0.35 be established, related to the flat per-minute rate associated with all operator-assisted calls. In proposing this maximum cap, Walsh states a belief that he has reflected a market-based rate that would also apply to a coin-sent rate for local calls. Under Walsh's proposal, rate changes below the maximum caps would be filed with the Commission and treated as compliance filings with no notice requirement. As this Commission stated previously in Order No. 84-622, under Walsh's plan, a proposed adjustment in rates below the maximum caps does not constitute a general ratemaking proceeding since the approval of the maximum rates constitutes approval of each and every lower rate level.

Walsh stated that he considered a number of factors in developing his recommended maximum caps in this case, including the level of maximum caps prior to the Commission removing these caps in 1995, actions taken by other State Commissions, and advances in technology which have impacted the provisioning of operator-assisted calls. Walsh reviewed the maximum caps which applied to surcharges associated with intrastate operator-assisted calls prior to the Commission's 1995 Order removing the maximum caps form of regulation. The surcharges associated with intrastate operator-assisted calls that Walsh has proposed are generally consistent with the maximum caps which were in effect prior to the Commission's 1995 Order. Walsh expressed the belief that, after reviewing the current level of surcharges associated with intrastate operator-assisted calls, the tremendous variance in these rates, and the history of increases in these rates, it is necessary for the Commission to review the current regulatory framework.

Walsh noted that a review of actions taken by other State Commissions shows that most Commissions have maximum caps in place driven by the rates of the dominant carrier, which generally would be AT&T or the BOC, which he believes justifies his proposal under the present circumstances.

Finally, Walsh noted that technology has impacted the provisioning of operator-assisted calls, which is actually a misnomer. Technology in recent years has been perfected to the point that very few operator-assisted calls require the actual assistance of a live operator to complete the call. This technology, according to Walsh, has provided drastic reductions in the actual cost of providing operator-assisted calls with the elimination of labor intensive cost. Therefore, Walsh states that the maximum caps which he has proposed, although not cost-based, clearly reflect a reduction in rates from the current level of charges being imposed on most operator-assisted calls over the interexchange network.

Vincent Townsend

Vincent Townsend, President of Pay Tel Communications, Inc., testified. Tr., at 66-82. Townsend stated that Pay Tel was the first telecommunications provider to receive authority from this Commission to provide intrastate automated collect inmate telephone services, in 1991. Pay Tel supports the recommendations of Staff witness Walsh, as long as they are adopted in their entirety. Townsend notes that the Staff proposed price caps are consistent with other states who have addressed capping the operator surcharge on such calls. Townsend specifically cited Florida Public Service Commission Docket No. 951560-TP. In January, 1999, Townsend noted that the Florida Commission adopted a cap on operator surcharges for collect calls at the same $1.75 level proposed by Staff witness Walsh, applicable to both long distance and local calls.

Townsend stated his belief that the net effect of Walsh's proposal upon consumers will be positive. The recommended caps for long distance calls would substantially reduce the long distance rates consumers pay to some inmate telephone service providers in South Carolina, according to Townsend. Also, local collect calls would be priced below the nationwide average, while bringing local calling rates for inmate telephone service more into line with the inmate telephone service provider's cost for those calls.

Edward J. Caputo

WorldCom presented the testimony of Edward J. Caputo, Director of Operator and Directory Services for that Company. Tr., at 82-101. Caputo asserted that increased competition in the South Carolina intraLATA and intrastate operator-assisted calling market has driven WorldCom's prices for these services lower over the last several years.

Simultaneously, Caputo notes that WorldCom's costs for providing operator-assisted services have risen. MCI, therefore, as per Caputo's testimony needs flexibility with regard to pricing, including operator surcharges and per minute rates. Without this flexibility, WorldCom states that it could not allocate costs equitably across all markets and services. Caputo further notes that the Staff proposal, if adopted, would benefit customers in one market, but would be detrimental to customers in other markets. WorldCom finally states that even if few of its rates would be immediately affected by the price caps being proposed in this proceeding, the better course would be to let the existing competitive market work. WorldCom does not favor the Staff proposal in this case.

Suzette Drouillard

Suzette Drouillard, District Manager of AT&T's Consumer Transaction Marketing organization also testified. Tr., at 101-134. Ms. Drouillard stated that AT&T's traditional operator handled portfolio is experiencing a decline, with a worsening trend. Further, the platform that these calls travel over is maintained by another affiliated company, and there are significant limitations on AT&T's ability to institute enhancements to the platform or to reduce costs, and the costs of development are increasing, according to the witness. Uncollectible expenses are on the increase as well as other expenses. Ms. Drouillard states a belief that these competitive products operate is driven by market forces, not by artificial means such as rate caps. Ms. Drouillard asserts that setting prices at an artificial ceiling is not necessary and only harms the market, since customers would have less incentive to move to other more convenient and lower cost forms of communication. According to the witness, price caps force businesses to attempt to artificially manage their entire portfolio of products and services by factoring the diminishing or negative returns for these products into their total mix of offers, or to remove what becomes an unprofitable product entirely. Finally, Ms. Drouillard stated that if AT&T's rates are capped as recommended by Staff witness Walsh, its charges for operator assisted services would be below its costs, and that AT&T would have to consider the option of discontinuing this service in the South Carolina market.

Walter Rice

Walter Rice, President of the South Carolina Public Communications Association also presented testimony. Tr., at 134-144. Rice states that SCPCA supports the recommendations of the Commission Staff, as long as they are adopted in their entirety. Rice notes that the SCPCA believes that the price caps that Staff has proposed are in the public interest, and will benefit users of payphone services in South Carolina.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On August 2, 1984, this Commission issued Order No. 84-622, which adopted a maximum rate level for each tariff charge for intrastate long distance carriers. This Commission found that adjustments of rates below the maximum would not constitute a general ratemaking, since the approval of the maximum rate constituted approval of each and every lower rate level. Tr., Walsh at 11.

2. On December 15, 1995, in Order No. 95-1734, this Commission partially modified Order No. 84-622, by removing the maximum rate cap requirements on business services offered under the AT&T Private Line Service Tariff, the Customer

Network Service Tariff, and all Consumer Card and Operator Service Offerings. This Commission's intent in this Order was to recognize market-driven pricing in lieu of traditional maximum rate regulation, and give greater flexibility to meet competitive forces. Id. at 11-13.

3. The consumers of South Carolina have not benefited from the shift from maximum cap regulation to market-driven pricing with regard to surcharges and rates associated with intrastate operator-assisted calls. There is a wide variation in rates for these services in South Carolina today, especially in situations where a consumer uses a local exchange carrier's calling card to complete a call from locations which have not selected that local exchange carrier as their toll provider. Competitive forces have not produced consistent rates for South Carolina consumers in these situations. An example is the 5 minute call rates cited by witness Walsh which vary between $1.75 and $7.70. Id. at 15-16.

4. Market-driven pricing with operator-assisted calls has resulted in consumers being exposed to a pattern of ever-increasing rates in such situations.

5. The maximum rate form of regulation should be reinstituted with regard to surcharges and rates associated with intrastate operator-assisted calls where the consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as their toll provider.

6. A maximum cap of $1.75 is established for operator surcharges on all calls where the consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as their toll provider. A

maximum cap of $0.35 is established related to the flat per-minute rate associated with these calls. These caps apply to all intraLATA and interLATA customer dialed calling card station to station calls where the consumer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as their toll provider. Rate filings below the maximum caps shall be filed with the Commission and treated as compliance filings with no notice requirement. As formerly seen in Order No. 84-622, a proposed adjustment in rates below the maximum caps does not constitute a general ratemaking proceeding since the approval of the maximum rates constitutes approval of each and every lower rate level. Id. at 17.

7. The stated rates are generally consistent with the maximum caps which were in effect prior to the Commission's 1995 Order. Id. at 18.

8. The stated rates are generally consistent with the rates promulgated by the Florida Public Service Commission in Order No. PSC-99-0088-FOF-TP in Docket No.951560-TP, wherein that Commission adopted a $1.75 surcharge on operator-assisted non-person-to-person calls. Tr., Rice at 140.

9. The Staff's review of the current level of surcharges associated with intrastate operator-assisted calls, the tremendous variance in these rates and the history of increases in these rates dictate that the changes as outlined in this Order are in the public interest.

10. The positions of WorldCom and AT&T in this proceeding are rejected. WorldCom suggests that few of its rates would immediately be affected by the price caps being proposed in this proceeding. AT&T alleges that the Staff proposal, if adopted,

would force that Company to charge rates for operator-assisted calls below its cost. However, it is duly noted that AT&T's actual cost is not outlined in its testimony, so it is impossible for this Commission to make that determination with complete certainty.

11. In setting these rates, we would note that we are not modifying the $1.00 hospitality surcharge set by us in prior orders, nor are we attempting to set local coin rates for pay telephones, or rates for collect calls from inmate facilities.

12. All affected carriers shall be required to file tariffs reflecting the newly implemented caps effective December 1, 2001.

13. Staff shall continue to monitor consumer complaints related to surcharges and rates associated with O^+ services, and shall report back to the Commission should a pattern of consumer complaints develop.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

William Saunders

Chairman

ATTEST:

Gary E. Walsh

Executive Director

(SEAL)